CUSTOMS BULLETIN AND DECISIONS

Weekly Compilation of

Decisions, Rulings, Regulations, Notices, and Abstracts

Concerning Customs and Related Matters of the

U.S. Customs Service

U.S. Court of Appeals for the Federal Circuit

and

U.S. Court of International Trade

VOL. 32 **MARCH 18, 1998** **NO. 11**

This issue contains:

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE

NOTICE

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U.S. Customs Service

Treasury Decisions

(T.D. 98–18)

RETRACTION OF REVOCATION NOTICE

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: The following Customs broker license numbers were erroneously included in a published list of revoked Customs brokers licenses in the Federal Register.

Customs Broker	*License No.*
Mark Rendell Dawson	07156
Pamela Louise Schnetter	13140
Renee E. Stein	07160

Licenses 13140, 07156, and 07160, issued in the Port of Los Angeles, are valid licenses.

Dated: February 27, 1998.

PHILIP METZGER,
Director,
Trade Compliance.

[Published in the Federal Register, March 11, 1998 (63 FR 11952)]

(T.D. 98–19)

FOREIGN CURRENCIES

DAILY RATES FOR COUNTRIES NOT ON QUARTERLY LIST FOR FEBRUARY 1998

The Federal Reserve Bank of New York, pursuant to 31 U.S.C. 5151, has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

Holiday(s): February 16, 1998.

Greece drachma:

February 1, 1998	$0.003446
February 2, 1998	.003474
February 3, 1998	.003477
February 4, 1998	.003507
February 5, 1998	.003526
February 6, 1998	.003508
February 7, 1998	.003508
February 8, 1998	.003508
February 9, 1998	.003480
February 10, 1998	.003487
February 11, 1998	.003482
February 12, 1998	.003496
February 13, 1998	.003473
February 14, 1998	.003473
February 15, 1998	.003473
February 16, 1998	.003473
February 17, 1998	.003472
February 18, 1998	.003483
February 19, 1998	.003472
February 20, 1998	.003460
February 21, 1998	.003460
February 22, 1998	.003460
February 23, 1998	.003521
February 24, 1998	.003509
February 25, 1998	.003490
February 26, 1998	.003479
February 27, 1998	.003478
February 28, 1998	.003478

South Korea won:

February 1, 1998	$0.000654
February 2, 1998	.000643
February 3, 1998	.000617
February 4, 1998	.000622
February 5, 1998	.000622
February 6, 1998	.000642
February 7, 1998	.000642
February 8, 1998	.000642
February 9, 1998	.000642
February 10, 1998	.000631
February 11, 1998	.000624

FOREIGN CURRENCIES—Daily rates for countries not on quarterly list for February 1998 (continued):

South Korea won (continued):

February 12, 1998	$0.000614
February 13, 1998	.000616
February 14, 1998	.000616
February 15, 1998	.000616
February 16, 1998	.000616
February 17, 1998	.000591
February 18, 1998	.000584
February 19, 1998	.000597
February 20, 1998	.000602
February 21, 1998	.000602
February 22, 1998	.000602
February 23, 1998	.000601
February 24, 1998	.000604
February 25, 1998	.000608
February 26, 1998	.000604
February 27, 1998	.000612
February 28, 1998	.000612

Taiwan N.T. dollar:

February 1, 1998	$0.029197
February 2, 1998	.029851
February 3, 1998	.030075
February 4, 1998	.029369
February 5, 1998	.030349
February 6, 1998	.030349
February 7, 1998	.030349
February 8, 1998	.030349
February 9, 1998	.030166
February 10, 1998	.030349
February 11, 1998	.030488
February 12, 1998	.030395
February 13, 1998	.030441
February 14, 1998	.030441
February 15, 1998	.030441
February 16, 1998	.030441
February 17, 1998	.030257
February 18, 1998	.030331
February 19, 1998	.030441
February 20, 1998	.030395
February 21, 1998	.030395
February 22, 1998	.030395
February 23, 1998	.030349
February 24, 1998	.030488
February 25, 1998	.030675
February 26, 1998	.030912
February 27, 1998	.031056
February 28, 1998	.031056

Dated: March 2, 1998.

FRANK CANTONE,
Chief,
Customs Information Exchange.

(T.D. 98–20)

FOREIGN CURRENCIES

VARIANCES FROM QUARTERLY RATES FOR FEBRUARY 1998

The following rates of exchange are based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York, pursuant to 31 U.S.C. 5151, and reflect variances of 5 per centum or more from the quarterly rates published in Treasury Decision 98–8 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following rates.

Holiday(s): February 16, 1998.

Australia dollar:	
February 1, 1998	$0.685200
February 2, 1998	.686800
Japan yen:	
February 4, 1998	$0.008079
February 5, 1998	.008110
February 6, 1998	.008048
February 7, 1998	.008048
February 8, 1998	.008048
February 9, 1998	.008046
February 10, 1998	.008099
February 11, 1998	.008095
February 12, 1998	.008079
February 13, 1998	.007976
February 14, 1998	.007976
February 15, 1998	.007976
February 16, 1998	.007976
Malaysia dollar:	
February 1, 1998	$0.236407
February 10, 1998	.278552
February 11, 1998	.278590
February 12, 1998	.264550
February 19, 1998	.268097
February 20, 1998	.264550
February 21, 1998	.264550
February 22, 1998	.264550
February 24, 1998	.266667
February 25, 1998	.267380
February 26, 1998	.269724
February 27, 1998	.269906
February 28, 1998	.269906

FOREIGN CURRENCIES—Variances from quarterly rates for February 1998 (continued):

Mexico peso:

February 10, 1998	$0.117633
February 13, 1998	.118064
February 14, 1998	.118064
February 15, 1998	.118064
February 16, 1998	.118064
February 17, 1998	.118036
February 18, 1998	.116959
February 19, 1998	.117028
February 20, 1998	.116414
February 21, 1998	.116414
February 22, 1998	.116414
February 23, 1998	.115875
February 24, 1998	.116144
February 25, 1998	.116509
February 26, 1998	.116768
February 27, 1998	.117268
February 28, 1998	.117268

Thailand baht (tical):

February 1, 1998	$0.018832
February 2, 1998	.019608
February 10, 1998	.022026
February 11, 1998	.022779
February 12, 1998	.022173
February 18, 1998	.021834
February 19, 1998	.022624
February 20, 1998	.022371
February 21, 1998	.022371
February 22, 1998	.022371
February 23, 1998	.022321
February 24, 1998	.022727
February 25, 1998	.023148
February 26, 1998	.023256
February 27, 1998	.023175
February 28, 1998	.023175

Dated: March 2, 1998.

FRANK CANTONE,
Chief,
Customs Information Exchange.

U.S. Customs Service

General Notices

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, DC, March 4, 1998.

The following documents of the United States Customs Service, Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and U.S. Customs Service field offices to merit publication in the CUSTOMS BULLETIN.

STUART P. SEIDEL,
Assistant Commissioner,
Office of Regulations and Rulings.

REVOCATION OF CUSTOMS RULING LETTERS RELATING TO THE APPLICABILITY OF THE VESSEL REPAIR STATUTE PRIOR TO THE DOCUMENTATION OF VESSELS UNDER THE UNITED STATES FLAG

ACTION: Notice of revocation of rulings.

SUMMARY: Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Implementation Act (Pub.L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking all prior rulings inconsistent with its position regarding the applicability of the vessel repair statute prior to the documentation of vessels under the United States flag. It is Customs position that a vessel that is not documented under the U.S. flag at the time foreign repair work is performed shall be assessed vessel repair duties at the time of its first arrival in the U.S. if it is clear that the vessel intended to engage in the U.S. foreign or coastwise trade at the time the foreign repair work was performed. Notice of the proposed revocation was published January 21, 1998, in the CUSTOMS BULLETIN, Volume 32, Number 2/3.

EFFECTIVE DATE: May 18, 1998.

FOR FURTHER INFORMATION CONTACT: Glen E. Vereb, Entry Procedures and Carriers Branch, U.S. Customs Service, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229 (202–927–2320).

SUPPLEMENTAL INFORMATION

BACKGROUND

On January 21, 1998, Customs published a notice in the CUSTOMS BULLETIN, Volume 32, Number 2/3, proposing to revoke all prior rulings inconsistent with its new position regarding the applicability of the vessel repair statute prior to the documentation of vessels under the United States flag. Customs invited comments on the correctness of the proposed revocation.

Title 19, United States Code, section 1466, provides in pertinent part for payment of duty in the amount of 50 percent *ad valorem* on the cost of foreign repairs to a vessel documented under the laws of the United States to engage in the foreign or coastwise trade, *or vessels intended to engage in such trade.* (Emphasis added)

For many years Customs rulings applied the plain wording of the vessel repair statute holding that foreign repair work was dutiable if the vessel was documented for, or intended to engage in, the foreign or coastwise trade. More recent Customs decisions held that in certain cases foreign shipyard work performed on a vessel prior to its documentation under the laws of the United States to engage in the foreign or coastwise trade is nondutiable under section 1466. The rationale for this position was that the U.S. Customs Service does not have the authority to coerce the utilization of domestic repair facilities for vessels which are documented under the flag of another nation or are not documented at all. To the extent that a vessel is clearly intended to engage in the foreign or coastwise trade, Customs now believes this position to be in direct contravention of the statutory language which specifically places duty upon repairs to those vessels not so documented at the time of foreign shipyard work but which are nonetheless intended to engage in those trades.

In view of the above, it was proposed that Customs will apply 19 U.S.C. 1466 in those instances where a vessel is either foreign-flagged, or not documented under the laws of the United States or any other nation, including temporarily removed from United States documentation during the course of, or prior to, work performed in a foreign shipyard and is then redocumented for, or used in, or from available evidence deemed intended to be used in the United States foreign or coastwise trade.

Two comments were received in response to the notice. The essence of the comments and our responses follows:

Comment:

According to the plain language of the statute, there are two broad categories of vessels that are subject to the repair duty imposed under 19 U.S.C. 1466: (1) vessels documented under the laws of the United States to engage in foreign or coastwise trade; and (2) vessels intended to be employed in such trade. There are no requirements in this latter provision that vessels intended to be employed in such trade be registered in the United States or even be registered at all. Thus, vessels in

this second category may be either foreign-flagged or undocumented. This interpretation of the statute pursuant to the so-called "plain language principle" is not only consistent with a recognized doctrine of statutory construction (i.e., in the absence of ambiguity, the plain meaning of the statute must prevail), but with respect to this particular statute, is also in accord with prior judicial decisions regarding its interpretation, and with the legislative intent of Congress that this provision be broadly construed in order to provide maximum protection to American shipyards and their workers.

Response:

Custom agrees. To administer the vessel repair statute otherwise runs contra to a basic tenet of statutory construction, prior judicial interpretations of this provision, and the purpose of Congress in enacting it as set forth in its legislative history.

Comment:

By not identifying specific rulings in the notice published in the January 21, 1998, CUSTOMS BULLETIN, interested parties are unable to discern whether the facts in a given ruling may or may not be those Customs believes will trigger the act of revocation. This procedure is inconsistent with section 623 of Title VI of the North American Free Trade Implementation Act and Customs should republish the original notice with a listing of the rulings that Customs currently believes will be impacted by its new ruling posture.

Response:

Customs disagrees. The genesis of the modern vessel repair statute is found in the Act of July 18, 1866, Chapter 24, section 23 (14 Stat. 183), which imposed a 50 percent *ad valorem* duty on the foreign cost of repairs to United States vessels documented to engage in the foreign or coastwise trade on the northern, northeastern, and northwestern frontiers (practically speaking, Great Lakes, Atlantic, and Pacific Coast trade with Canada). The statute was recodified in the Revised Statutes of the United States in 1874 (R.S. 3114 and 3115), but was left largely unamended until the Act of September 21, 1922, at which time the area of consideration for dutiable repairs was expanded to include repairs to all vessels documented under U.S. law to engage in the foreign or coastwise trade, *or intended to be so employed.* Because of resource constraints and federal file maintenance practices and changes at Customs Headquarters and field offices which issued vessel repair rulings over the course of the subsequent seventy-five years, Customs could not possibly represent to any interested party that all rulings that would be affected by the notice of proposed revocation could be identified. Furthermore, the legislative intent of section 623 of Title VI of the North American Free Trade Implementation Act was to provide assurances of transparency concerning Customs rulings through publication in the CUSTOMS BULLETIN. The notice of proposed revocation as it appeared in

the CUSTOMS BULLETIN of January 21, 1998, is in compliance with that statutory provision.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking all prior rulings inconsistent with its position regarding the applicability of the vessel repair statute to vessels not documented under the United States flag. It is Customs position that a vessel not so documented (i.e., undocumented or foreign-flagged) at the time foreign repair work is performed shall be assessed vessel repair duties at the time of its first arrival in the U.S. if it is clear that the vessel intended to engage in the U.S. foreign or coastwise trade at the time the foreign repair work was performed.

Publication of rulings or decisions pursuant to 19 U.S.C. 1625(c)(1) does not constitute a change of practice or position in accordance with 177.10(c)(1), Customs Regulations (19 CFR 177.10(c)(1)).

Dated: March 4, 1998.

STUART P. SEIDEL,
Assistant Commissioner,
Office of Regulations and Rulings.

REVOCATION OF RULING LETTER RELATING TO TARIFF CLASSIFICATION OF A DUAL-CHAMBERED SYRINGE CONTAINING LYOPHILIZED ANTIHEMOPHILIC FACTOR IN ONE CHAMBER AND A DILUENT, CONSISTING OF STERILE WATER, IN THE OTHER CHAMBER

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of revocation of tariff classification ruling letter.

SUMMARY: Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking a ruling pertaining to the tariff classification of a dual-chambered syringe as more fully described in this notice and the attachment hereto.

EFFECTIVE DATE: Merchandise entered or withdrawn from warehouse for consumption May 18, 1998.

FOR FURTHER INFORMATION CONTACT: Edward A. Bohannon, Office of Regulations and Rulings, Senior Attorney, Commercial Rulings Division, U.S. Customs Serivce, 1300 Pennsylvania Ave. NW, Washington, DC 20229 (202) 927–1613.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On January 28, 1998, Customs published in the CUSTOMS BULLETIN, in Volume 32, Number 4, a Notice of a proposal to revoke NY 805446, dated January 10, 1995, which held that a dual-chambered syringe containing lyophilized antihemophilic factor in one chamber and a diluent, consisting of sterile water, in the other chamber, was classifiable as medicaments put up for retail sale under subheading 3004.90.9090, Harmonized Tariff Schedule of the United States Annotated (HTSUSA). No comments were received in response to that Notice.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking NY 805446 to reflect the proper classification of a dual-chambered syringe containing lyophilized antihemophilic factor in one chamber and a diluent, consisting of sterile water, in the other chamber, under subheading 3002.10.00, HTSUSA, a more specific provision for, *inter alia*, antisera and other blood fractions, and a provision which covers products described thereunder whether or not put up in measured doses or for retail sale. Headquarters Ruling Letter 958313 revoking NY 805446 is set forth in the attachment to this Notice.

Dated: March 3, 1998.

MARVIN AMERNICK,
(for John A. Durant, Director,
Commercial Rulings Division.)

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY.
U.S. CUSTOMS SERVICE,
Washington, DC, March 3, 1998.
CLA–2 RR:CR:GC 958313 EAB
Category: Classification
Tariff No. 3002.10.00

MR. ROBERT S. KIRSCHENBAUM
ALPHA THERAPEUTIC CORPORATION
5555 Valley Boulevard
Los Angeles, CA 90032

Re: Dual-chambered syringe containing lyophilized Antihemophilic Factor (human) in one chamber, and a diluent, consisting of sterile water, in the other chamber; NY 805446 revoked.

DEAR MR. KIRSCHENBAUM:

This is in response to your letter of July 27, 1995, requesting reconsideration of New York Ruling Letter NY 805446, issued on January 10, 1995, to Carmichael International

Service on behalf of Alpha Therapeutic Corporation, concerning the classification of a dual-chambered syringe containing lyophilized Antihemophilic Factor (human) in one chamber, and a diluent, consisting of sterile water, in the other chamber.

This letter is to inform you that NY 805446 no longer reflects the view of the Customs Service and is revoked in accordance with § 177.9(d) of the Customs Regulations (19 CFR 177.9(d)). Pursuant to § 625, Tariff Act of 1930 (19 U.S.C. 1625), as amended by § 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub.L. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation of NY 805446 was published on January 28, 1998, in the CUSTOMS BULLETIN, in Volume 32, Number 4. No comments were received. The following represents our position.

Facts:

The merchandise, a dual-chambered syringe which contains lyophilized Antihemophilic Factor (human) in one chamber, and a diluent, consisting of sterile water, in the other chamber, was classified under subheading 3004.90.9090, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), as a medicament.

Issue:

Whether the merchandise is classifiable under heading 3004 or 3002 of the HTSUSA.

Law and Analysis:

Merchandise imported into the U.S. is classified under the HTSUSA. Tariff classification is governed by the principles set forth in the General Rules of Interpretation (GRIs) and, in the absence of special language or context which otherwise requires, by the Additional U.S. Rules of Interpretation. The GRIs and the Additional U.S. Rules of Interpretation are part of the HTSUSA and are to be considered statutory provisions of law for all purposes.

GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section or chapter notes and, unless otherwise required, according to the remaining GRIs taken in order.

Heading 3002, HTSUSA, provides, in part, for antisera and other blood fractions and modified immunological products, whether or not obtained by means of biotechnical processes. Subheading 3002.10.00 specifically refers to human blood plasma as being included within this heading.

The Explanatory Notes to the Harmonized Commodity Description and Coding System (Explanatory Notes or ENs), including the Subheading Explanatory Notes, although not dispositive or legally binding, provide a commentary on the scope of each heading and certain subheadings of the HTSUSA, and are generally indicative of the proper interpretation of such headings and subheadings. *See* T.D. 89–80, *54 Fed. Reg. 35127*, 35128 (August 23, 1989).

The Explanatory Notes to heading 3002 state that this heading covers, inter alia, the following products derived from blood: human blood; animal blood prepared for therapeutic, prophylactic or diagnostic uses; antisera and other blood fractions, and modified immunological products, whether or not obtained by means of biotechnological processes, such as monoclonal antibodies (MABs), antibody fragments and antibody and antibody fragment conjugates. Further, the products of this heading remain classified here whether or not in measured doses or put up to retail sale and whether in bulk or in a small package.

The description of the product upon which HQ 559136 was issued states that it is an "antihemophilic factor" which is therapeutically indicated for the prevention and control of bleeding, primarily for patients with a clotting deficiency due to hemophilia. The product is derived from blood plasma. It is freeze dried after being placed in one chamber of the dual chamber syringe and a diluent is placed in the other chamber. Inasmuch as the product is derived from blood, it is described by heading 3002.

Holding:

A dual-chambered syringe which contains lyophilized Antihemophilic Factor (human) in one chamber, and a diluent, consisting of sterile water, in the other chamber is classifiable under subheading 3002.10.0090, HTSUSA, a provision for antisera and other blood fractions, other, and may be entered free of duty.

NYRL 805446 is revoked.

MARVIN AMERNICK,
(for John A. Durant, Director,
Commercial Rulings Division.)

REVOCATION OF RULING LETTER RELATING TO TARIFF CLASSIFICATION OF PH AND OTHER TEST INDICATOR STRIPS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of revocation of tariff classification ruling letter.

SUMMARY: Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking a ruling pertaining to the tariff classification of pH and other test indicator strips. Customs invites comments on the correctness of the proposed revocation.

EFFECTIVE DATE: Merchandise entered or withdrawn from warehouse for consumption May 18, 1998.

FOR FURTHER INFORMATION CONTACT: Edward A. Bohannon, Office of Regulations and Rulings Senior Attorney, Commercial Rulings Division, U.S. Customs Service, 1300 Pennsylvania Ave. NW, Washington, DC, 20229 (202) 927–1613.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On January 21, 1998, Customs published in the CUSTOMS BULLETIN, in Volume 32, Number 2/3, a Notice of a proposal to revoke HQ 952706, dated July 19, 1993, which held that pH and other test indicator strips were classifiable as other articles of paper in subheading 4823.90.8500, Harmonized Tariff Schedule of the United States Annotated (HTSUSA). No comments were received in response to that Notice.

Pursuant to section 625, Tariff Act of 1930 (19 U.S.C. 1625), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking HQ 952706 to reflect the proper classification of pH and other test indicator strips in heading 3822, HTSUSA, the provision for composite diagnostic or laboratory reagents, other than those of heading 3002 or 3006. Headquarters Ruling Letter 958186, revoking HQ 952706, is set forth in the attachment to this document.

Publication of rulings or decisions pursuant to 19 U.S.C. 1625 does not constitute a change of practice or position in accordance with section 177.10(c)(1), Customs Regulations (19 CFR 177.10(c)(1)).

Dated: March 3, 1998.

MARVIN AMERNICK,
(for John A. Durant, Director,
Commercial Rulings Division.)

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
Washington, DC, March 3, 1998.

CLA–2 RR:CR:GC 958186 EAB
Category: Classification
Tariff No. 3822.00.5090

PORT DIRECTOR
U.S. CUSTOMS SERVICE
6747 Engle Road
Middleburg Heights, OH 44130

Re: PH and other test indicator strips; HQ 952706; HQ 953405; HQ 956567; HQ 088196.

DEAR PORT DIRECTOR:

This is in response to your memorandum dated April 11, 1995, forwarding a request for Internal Advice dated February 24, 1995, from counsel for EM Industries, Inc., concerning the classification under the Harmonized Tariff Schedule of the United States (Annotated) (HTSUSA) of pH and other test indicator strips. We regret the delay.

This letter is to inform you that HQ 952706 no longer reflects the view of the Customs Service and is revoked in accordance with section 177.9(d) of the Customs Regulations (19 CFR 177.9(d)). Pursuant to section 625, Tariff Act of 1930 (29 U.S.C. 1625), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub.L. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation of HQ 952706 was published on January 21, 1998, in the CUSTOMS BULLETIN, in Volume 32, Number 2/3. No comments were received. The following represents our position.

Facts:

The merchandise is known commercially as ColorpHast® pH Indicator strips, which strips consist of non-bleeding indicator dyes bonded to cellulose and are used to test for pH levels between 0 and 14, inclusive.

Issue:

Whether pH and other test indicator strips are classifiable under the Harmonized Tariff Schedule of the United States (Annotated) (HTSUSA) as composite laboratory reagents or as articles of coated paper.

Law and Analysis:

Merchandise imported into the U.S. is classified under the HTSUSA. The tariff classification of such merchandise is governed by the principles set forth in the General Rules of Interpretation (GRIs) and, in the absence of special language or context which otherwise requires, by the Additional U.S. Rules of Interpretation. The GRIs and Additional U.S. Rules of Interpretation are part of the HTSUSA and are to be considered statutory provisions of law for all purposes.

In Headquarters Ruling Letter HQ 952706 dated July 19, 1993, Customs held that pH and other test indicator strips composed of chemically impregnated paper on a plastic backing were classifiable pursuant to GRI 3(b) in subheading 4823.90.8500, HTSUSA, a residual provision for articles of paper. Heading 3822, HTSUSA, a provision for diagnostic or laboratory reagents on a backing, and prepared diagnostic or laboratory reagents whether or not on a backing, other than those of heading 3002 or 3006, was not considered.

In HQ 953405 (May 3, 1994), Customs held that certain test strips similar in composition to pH and other test indicator strips were classifiable in subheading 3822.00.5090, HTSUSA, a residual provision for composite diagnostic or laboratory reagents other than those containing antigens or antisera. Therein, Customs noted that in HQ 088196 (December 2, 1991), Customs determined that heading 3822 "describes, *inter alia*, 'composite diagnostic and laboratory reagents'". Thus, in HQ 953405, Customs determined that, since heading 4823 described "other articles of coated paper", but heading 3822 described composite "diagnostic or laboratory reagents on a backing", the goods were properly classified pursuant to GRI 1 in heading 3822, HTSUSA. To this same effect, *see* HQ 956567 (July 19, 1994), classifying paper or foil backed composite diagnostic and laboratory test strips or pads containing antigens or antisera in subheading 3822.00.10, HTSUSA, and paper or foil

backed composite diagnostic and laboratory test strips or pads not containing antigens or antisera in subheading 3822.00.5090, HTSUSA.

Customs finds that pH and other test indicator strips not containing antigens or antisera are classifiable in subheading 3822.00.5090, HTSUSA.

Holding:

PH and other test indicator strips containing antigens or antisera are classifiable in subheading 3822.00.10, HTSUSA, a provision for composite diagnostic or laboratory reagents, other than those of heading 3002 or 3006, containing antigens or antisera, and pH and other test indicator strips not containing antigens or antisera and not containing methyl chloroform or carbon tetrachloride are classifiable in subheading 3822.00.5090, HTSUSA, a provision for composite diagnostic or laboratory reagents, other than those of heading 3002 or 3006, other, other.

HQ 952706 is revoked.

MARVIN AMERNICK
(for John A. Durant, Director,
Commercial Rulings Division.)

PROPOSED MODIFICATION OF CUSTOMS RULING LETTER RELATING TO TARIFF CLASSIFICATION OF INSECT TRAPS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed modification of tariff classification ruling letter.

SUMMARY: Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub.L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs intends to modify New York Ruling Letter (NYRL) 880892 dated December 14, 1992, concerning the classification of insect traps.

DATE: Comments must be received on or before April 17, 1998.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Commercial Rulings Division, 1300 Pennsylvania Avenue, NW, Washington, D.C. 20229. Comments submitted may be inspected at the Office of Regulations and Rulings.

FOR FURTHER INFORMATION CONTACT: Peter T. Lynch, Office of Regulations and Rulings, General Classification Branch, U.S. Customs Service, 1300 Pennsylvania Ave. NW, Washington, DC 20229 (202) 927–1396.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Moderniza-

tion) of the North American Free Trade Agreement Implementation Act (Pub.L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs intends to modify a ruling pertaining to the tariff classification of insect traps. Customs invites comments as to the correctness of the proposed modification.

The traps under consideration may be imported alone, or as part of a trap assembly which includes the trap, a tripod-type trap stand, and a "bonder" or clamp to attach the trap to the stand. In some cases, the traps may be imported with attractants and/or insecticides. The traps are designed for long term use, while the bait is generally replaced twice each year. The beetles are lured into the trap by using pheromones and collide with the barrier trap during their flight to tree stands. They fall through the trap slots and slide down the smooth inner sides of the trap into the collecting pan. The trapped beetles can then be killed by crushing, or the inside of the collection well can be coated with an insecticide.

Customs intends to modify NYRL 880892, dated December 14, 1992, to reflect the proper classification of insect traps which are imported with attractants (pheromones) in heading 3808, HTSUS, which provides for insecticidal products. NYRL is set forth as Attachment A to this document.

These insect traps were initially classified in heading 3926, HTSUS, which provides for other articles of plastic, whether or not they were imported with attractants (pheromones). After reviewing the circumstances and details of the case, Customs has determined that there is a significant difference between traps which are imported with attractants and traps which do not have attractants. Accordingly, the ruling needs to be modified to reflect what Customs now believes to be the proper classifications.

Before taking this action, consideration will be given to any written comments timely received. Proposed HQ 961299, modifying NYRL 880892 and classifying the traps differently when they are imported alone or with a pheromone is set forth in Attachment B to this document.

Claims for detrimental reliance under section 177.9, Customs Regulations (19 CFR 177.9), will not be entertained for actions occurring on or after the date of publication of this notice.

Dated: March 3, 1998.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, NY, December 14, 1992.

CLA–2–39:S:N:N6:221 880892
Category: Classification
Tariff No. 3926.90.9090

MR. HENRY HOFHEIMER
EL-TECH TECHNOLOGY, INC.
7 Woodland Avenue
Larchmont, NY 10538

Re: The tariff classification of insect traps from Germany.

DEAR MR. HOFHEIMER:

In your letter dated November 30, 1992, you requested a tariff classification ruling.

According to the descriptive literature submitted with your request, the slot-type insect traps are used to trap bark beetles. Each trap measures approximately 50 cm in length, 14 cm in width, and 60 cm in height. It may be suspended on a cord stretched between two trees, or mounted onto a stand. The trap may be baited with one or several dispensers. The beetles are lured into the trap by using pheromones and collide with the barrier trap during their flight to tree stands. They fall through the trap slots and slide down the smooth inner sides of the trap into the collecting pan. The trapped beetles can then be killed by crushing, or the inside of the collection well can be coated with an insecticide. The purpose of the traps is to control the pest population in forests.

The traps may be imported alone, or as part of a trap assembly which includes the trap, a tripod-type trap stand, and a "bonder" or clamp to attach the trap to the stand. In some cases the traps may be imported with attractants and/or insecticides. The traps are designed for long term use, while the bait is generally replaced twice each year. The trap or trap assemblies and the attractants/insecticides are considered to constitute a set when imported together packed for retail sale. The trap imparts the essential character to the set.

The applicable subheading for the beetle slot traps or trap assemblies, either when imported empty, or when imported with attractants and insecticides and packed together for retail sale, will be 3926.90.9090, Harmonized Tariff Schedule of the United States (HTS), which provides for other articles of plastics, other. The rate of duty will be 5.3 percent *ad valorem*.

This merchandise may be subject to the regulations of the Environmental Protection Agency. You may contact them at 401 M Street, S.W., Washington, D.C. 20460, telephone number (202) 382–2090.

This ruling is being issued under the provisions of Section 177 of the Customs Regulations (19 C.F.R. 177).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

JEAN F. MAGUIRE,
Area Director,
New York Seaport.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA-2 RR:CR:GC 961299ptl
Category: Classification
Tariff No. 3808 and 3926.90.9090.

MR. HENRY HOFHEIMER
EL-TECH TECHNOLOGY, INC.
7 Woodland Avenue
Larchmont, NY 10538

Re: Classification of insect traps; NY 880892 modified.

DEAR MR. HOFHEIMER:

In New York Ruling (NY) 880892, issued to you on December 14, 1992, Customs ruled that the beetle slot traps or trap assemblies, either when imported empty, or when imported with attractants and/or insecticides and packed together for retail sale, will be classified under subheading 3926.90.9090, Harmonized Tariff Schedule of the United States (HTSUS), which provides for other articles of plastics, other. Customs has reviewed that ruling and determined that an incorrect classification determination was made with respect to the traps when imported with attractants. Therefore, NY 880892 is modified as set forth in this ruling.

Facts:

According to the descriptive literature submitted with your request of November 30, 1992, the traps are used to trap bark beetles. Each trap measures approximately 50 cm in length, 14 cm in width, and 60 cm in height. It may be suspended on a cord stretched between two trees, or mounted onto a stand. The beetles are lured into the trap by using pheromones in dispensers and collide with the barrier trap during their flight to tree stands. The trap may be baited with one or several dispensers. They fall through the trap slots and slide down the smooth inner sides of the trap into the collecting pan. The trapped beetles can then be killed by crushing, or the inside of the collection well can be coated with an insecticide. The purpose of the traps is to control the pest population in forests.

The traps may be imported alone, or as part of a trap assembly which includes the trap, a wood tripod-type trap stand, and a "bonder" or clamp (the composition or construction of which is not described) to attach the trap to the stand. In some cases the traps may be imported with attractants and/or insecticides. The traps are designed for long term use, while the bait is generally replaced twice each year.

Issue:

What is the proper classification of the subject insect traps?

Law and Analysis:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRIs). The systematic detail of the HTSUS is such that virtually all goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied in order. In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes may be utilized. The Explanatory Notes (ENs), although not dispositive or legally binding, provide a commentary on the scope of each heading of the HTSUS, and are generally indicative of the proper interpretation of these headings. *See* T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The beetle slot traps are primarily made of plastic. They can be set up for operation by being hung from plastic coated wire or set upon a wooden frame assembly stand, such as the tripod with which it may be imported. The operative component of the insect trap assembly is the pheromone which lures the intended insect to the trap so that it can be captured. Your literature identifies three different pheromone baits: "Chalcoprax", "Linoprax", and "Pheroprax". The trap can apparently be used with any of the baits. However, without this pheromone component, the traps would be little different from elaborately designed plastic

devices with little or no ability to significantly reduce the insect population (the insecticide component would not be effective without the pheromone). When NY 880892 was issued, Customs was not aware of the significance the pheromone played in the effectiveness of the trap.

Depending on the configuration of the particular shipment, there are several combinations of articles which may be present at the time of importation. It would be possible to import the trap alone, the trap assembly, or either with the pheromone attractant and or insecticides.

When the traps are imported with the attractant, they form a complete pheromone-based trap system whether or not the remaining trap assembly components or the insecticides are included.

Heading 3808, HTSUS, provides for insecticides, rodenticides, fungicides, herbicides, * * *, put up in forms or packings for retail sale or as preparations or articles * * *. Classification at the subheading level is dependent upon the type and chemical structure of the article. Pursuant to EN 3808 (I), attractants which are "used to attract insects to traps" are considered to be insecticides. Accordingly, when the traps are imported with the attractant, they will be classified by application of GRI 1, as insecticidal articles within heading 3808, HTSUS.

When the traps or trap assemblies (with or without the non-attractant insecticide) are imported without the attractant, they will classified as they were in NY 880892.

Holding:

When imported with an attractant (pheromone), the insect traps or trap assemblies described above, are considered to be insecticidal products within heading 3808, HTSUS. Classification at the subheading level will depend upon the actual chemical structure of the pheromone.

When not imported with an attractant, the insect traps, which are constructed of plastic, whether imported separately or together with other components of the trap assemblies, are classified under the provisions for other articles of plastic, other, other, in subheading 3926.90.9890, HTSUS.

NY 880892 is modified accordingly.

JOHN A. DURANT,
Director,
Commercial Rulings Division.

PROPOSED MODIFICATION OF RULING LETTER RELATING TO COUNTRY OF ORIGIN DETERMINATION OF NURSING PADS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed modification of country of origin ruling letter.

SUMMARY: Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs intends to modify a ruling pertaining to the country of origin of nursing pads. Comments are invited on the correctness of the proposed ruling.

DATE: Comments must be received on or before April 17, 1998.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Textile Branch, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Comments submitted may be inspected at the Textile Branch, Office of Regulations and Rulings, 1300 Pennsylvania Avenue, NW., Washington, DC. 20229.

FOR FURTHER INFORMATION CONTACT: Josephine Baiamonte, Office of Regulations and Rulings, Textile Branch, U.S. Customs Serice, 1300 Pennsylvania Ave. NW, Washington, DC 20229 (202) 927–2394.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs intends to modify a ruling pertaining to the country of origin of nursing pads.

In New York Ruling Letter (NY) C81609, dated November 19, 1997, the classification and country of origin of nursing pads was addressed. Although NY C81609 correctly classified this merchandise in heading 6217, HTSUS, in the general provision for clothing accessories, the determination that the country of origin of the nursing pads is China is not correct. This ruling letter is set forth in "Attachment A". At issue in this proposed modification is the proper analysis and country of origin determination for the subject nursing pads.

Customs intends to modify NY C81609 to reflect the proper country of origin of the nursing pads based on section 102.21(c)(2), which states that for articles classifiable in heading 6217, HTSUS, the country of origin is based on the single country in which the good is wholly assembled. As the subject merchandise was wholly assembled in Canada, the country of origin of the nursing pads is Canada. Before taking this action, consideration will be given to any written comments timely received. Proposed Headquarters Ruling Letter (HQ) 961238 is set forth in "Attachment B" to this document.

Claims for detrimental reliance under section 177.9, Customs Regulations (19 CFR 177.9), will not be entertained for actions occurring on or after the date of publication of this notice.

Dated: March 2, 1998.

JOHN E. ELKINS,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, NY, November 19, 1997.

CLA-2-62:RR:NC:3:353 C81609
Category: Classification
Tariff No. 6217.10.9510

MR. OWEN HAIRSINE
ZEOTROPE HOLDINGS LTD.
12993-80th Ave., Surrey
B.C. Canada V3W 3B1

Re: The tariff classification of nursing pads from China.

DEAR MR. HAIRSINE:

In your letter dated November 2, 1997, you requested a classification ruling.

The submitted samples are nursing pads which you state are composed of 100% cotton woven fabric. The nursing pads are of two styles. Both styles are comprised of three pieces of fabric with a triangle shape and three with a half moon type shape. One style has a breathable coated nylon fabric on one side. The stated principal use in the United States for the pads are as an accessory to Nursing Brassiere.

The applicable subheading for the nursing pads will be 6217.10.9510, Harmonized Tariff Schedule of the United States (HTS), which provides for "Other made up clothing accessories; parts of garments or of clothing accessories, other than those of heading 6212: Accessories: Other, Of cotton. The duty rate will be 15.2% *ad valorem*.

The nursing pads fall within textile category designation 359. Based upon international textile trade agreements products of China are subject to quota and the requirement of a visa.

The designated textile and apparel categories may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected. Part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes. To obtain the most current information available, we suggest that you check, close to the time of shipment, the *Status Report on Current Import Quotas (Restraint Levels)*, an internal issuance of the U.S. Customs Service, which is available for inspection at your local Customs office.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Martin Weiss at 212-466-5881.

ROBERT B. SWIERUPSKI,
Director,
National Commodity Specialist Division.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
Washington, DC.
CLA-2 RR:TC:TE 961238 jb
Category: Classification

MR. OWEN HAIRSINE
ZEOTROPE HOLDINGS, LTD.
12993 80th Avenue
Surrey, British Columbia
V3W 3B1 Canada

Re: Modification of NY C81609, dated November 19, 1997; country of origin of nursing pads; 102.21(c)(2); tariff shift.

DEAR MR. HAIRSINE:

On, November 19, 1997, our New York office issued to you New York Ruling Letter (NY) C81609 addressing the classification and country of origin of two styles of cotton nursing pads. A review of the file has revealed that although the classification determination for the subject merchandise is accurate, an inaccurate determination was made with respect to the origin of the subject merchandise. Additionally, we note that your question with respect to coverage under the North American Free Trade Agreement (NAFTA) for this merchandise was left unanswered. Accordingly, this letter will set out the proper analysis and country of origin determination for this merchandise.

Facts:

The subject merchandise consists of two styles of nursing pads, one with a breathable waterproof nylon backing, and one without this backing, made of 100 percent cotton woven fabric. As stated in your letter, dated November 2, 1997, the manufacturing operations for this merchandise are as follows:

China
cotton flannelette fabric is formed (for both styles)
United States
polyurethane coated nylon taffeta is formed (for style with waterproof backing only)
Canada
cotton flannelette is cut into six pieces; three pieces with a triangle shape and three pieces with a half moon shape
for styles with waterproof backing only, the waterproof breathable nylon is cut into two pieces (a triangle and a half moon)
triangle and moon pieces are joined together using an off the arm seamier sewing machine
for styles with waterproof backing only, the two nylon pieces are joined on a single needle sewing machine
edge of the nursing pad is closed by using a serging sewing machine
for styles with waterproof backing only, the cotton and nylon are attached by serging the edges of both pieces
six nursing pads are packaged

Issue:

1. Does the subject merchandise qualify for NAFTA treatment?
2. What is the proper country of origin for the subject merchandise?

Law and Analysis:

NAFTA eligibility

The subject nursing pads undergo processing operations in Canada which is a party to the North American Free Trade Agreement (NAFTA). General Note 12, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), incorporates Article 401 of the NAFTA into the HTSUSA. Note 12(a) provides, in pertinent part:

* * * * * * *

(i) Goods that **originate** in the territory of a NAFTA party under the terms of subdivision (b) of this note **and that qualify to be marked as goods of Canada** under the terms of the marking rules * * * and are entered under a subheading for which a

rate of duty appears in the "Special" subcolumn followed by the symbol "CA" in parentheses, are eligible for such duty rate * * *. [Emphasis added]

Accordingly, the nursing pads at issue will be eligible for the "Special" "CA" rate of duty provided it is a NAFTA "originating" good under General Note 12(b), HTSUSA, and it qualifies to be marked as a good of Canada. Note 12(b) provides in pertinent part,

> For the purposes of this note, goods imported into the customs territory of the United States are eligible for the tariff treatment and quantitative limitations set forth in the tariff schedule as ***"goods originating in the territory of a NAFTA party"*** only if—
>
> (i) they are goods wholly obtained or produced entirely in the territory of Canada, Mexico and/or the United States; or
>
> (ii) they have been transformed in the territory of Canada, Mexico and/or the United States so that—
>
> (A) except as provided in subdivision (f) of this note, each of the non-originating materials used in the production of such goods undergoes a change in tariff classification described in subdivisions (r), (s) and (t) of this note or the rules set forth therein, or
>
> (B) the goods otherwise satisfy the applicable requirements of subdivisions (r), (s) and (t) where no change in tariff classification is required, and the goods satisfy all other requirements of this note; or
>
> (iii) they are goods produced entirely in the territory of Canada, Mexico and/or the United States exclusively from originating materials; or
>
> * * * * * * *

The subject merchandise qualifies for NAFTA treatment only if the provisions of General Note 12(b)(ii)(A) are met, that is, if the merchandise is transformed in the territory of Canada so that the non-originating material (the fabric formed in China) undergoes a change in tariff classification as described in subdivision (t).

As the nursing pads are classifiable in subheading 6217.10.9510, HTSUSA, subdivision (t), Chapter 62, rule 38, applies. That note states that:

> A change to headings 6213 through 6217 from any other chapter, except from headings 5106 through 5113, 5204 through 5212, 5307 through 5308 or 5310 through 5311, chapter 54, or headings 5508 through 5516, 5801 through 5802 or 6001 through 6002, *provided* that the good is both cut and sewn or otherwise assembled in the territory of one or more of the NAFTA parties.

When the fabric for the subject nursing pads leave China it is classifiable within headings 5204 through 5212. As the headings covering woven fabrics of cotton are excepted by subdivision (t), chapter 62, rule 38, the terms of the note are not met. Accordingly, the subject nursing pads do not qualify for NAFTA treatment.

Country of origin

On December 8, 1994, the President signed into law the Uruguay Round Agreements Act. Section 334 of that Act provides new rules of origin for textiles and apparel entered, or withdrawn from warehouse, for consumption, on and after July 1, 1996. On September 5, 1995, Customs published Section 102.21, Customs Regulations, in the Federal Register, implementing Section 334 (60 FR 46188). Thus, effective July 1, 1996, the country of origin of a textile or apparel product shall be determined by sequential application of the general rules set forth in paragraphs (c)(1) through (5) of Section 102.21.

Paragraph (c)(1) states that "The country of origin of a textile or apparel product is the single country, territory, or insular possession in which the good was wholly obtained or produced." As the subject merchandise is not wholly obtained or produced in a single country, territory or insular possession, paragraph (c)(1) of Section 102.21 is inapplicable.

Paragraph (c)(2) states that "Where the country of origin of a textile or apparel product cannot be determined under paragraph (c)(1) of this section, the country of origin of the good is the single country, territory, or insular possession in which the foreign material incorporated in that good underwent an applicable change in tariff classification, and/or met any other requirement, specified for the good in paragraph (e) of this section."

Paragraph (e) states that "The following rules shall apply for purposes of determining the country of origin of a textile or apparel product under paragraph (c)(2) of this section:"

6215–6217	If the good consists of two or more component parts, a change to an assembled good of heading 6215 through 6217 from unassembled components, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession.

The subject merchandise is classified in heading 6217, HTSUS. As the subject nursing pads are wholly assembled in a single country, Canada, the country of origin of the nursing pads is Canada.

JOHN DURANT,
Director,
Commercial Rulings Division.

PROPOSED MODIFICATION OF RULING LETTER RELATING TO TARIFF CLASSIFICATION OF 3-METHYL-2-NITRO-BENZOIC ACID

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed modification of a tariff classification ruling letter.

SUMMARY: Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625 (c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs intends to modify a ruling pertaining to the tariff classification of 3-methyl-2-nitrobenzoic acid. Comments are invited on the correctness of this proposal.

DATE: Comments must be received on or before April 17, 1998.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Commercial Rulings Division, 1300 Pennsylvania Avenue, NW., Washington, DC. 20229. Comments submitted may be inspected at the same location.

FOR FURTHER INFORMATION CONTACT: Robert Cascardo, Office of Regulations and Rulings, General Classification Branch, U.S. Customs Service, 1300 Pennsylvania Ave. NW, Washington, DC 20229 (202) 927–2402.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs intends to modify NY 889814 to reflect the proper classification of the subject 3-methyl-2-nitrobenzoic acid in subheading 2916.39.0300, HTSUS, as "[u]nsaturated acyclic monocarboxylic acids, cyclic monocarboxylic acids, their anhydrides, halides, peroxides and peroxyacids; their halogenated, sulfonated, nitrated or nitrosated de-

rivatives: Aromatic monocarboxylic acids, their anhydrides, halides, peroxides, peroxyacids and their derivatives: Other: 2-Nitro-m-toluic acid."

In NY 889814, dated September 17, 1993, Customs classified 3-methyl-2-nitrobenzoic acid in subheading 2916.39.4000, HTSUS, the provision for other aromatic monocarboxylic acids, their anhydrides, halides, peroxides, peroxyacids and their derivatives, products described in additional U.S. note 3 to section VI, dutiable at the rate of 13.5 percent *ad valorem* (1993). NY 889814 is set forth as "Attachment A" to this document.

We now believe that NY 889814 is incorrect. Analysis by the Customs laboratory indicates the 3-methyl-2-nitrobenzoic acid is also known as 2-Nitro-m-toluic acid. Subheading 2916.39.0300, HTSUS, is an *eo nomine* provision that specifically provides for 2-Nitro-m-toluic acid. Given that 3-methyl-2-nitrobenzoic acid is also known as 2-Nitro-m-toluic acid, we find that 3-methyl-2-nitrobenzoic acid is properly classified in subheading 2916.39.0300, HTSUS.

Before taking this action, consideration will be given to any written comments timely received. Proposed HQ 960537 modifying NY 889814 is set forth in "Attachment B" to this document.

Claims for detrimental reliance under section 177.9, Customs Regulations (19 CFR 177.9), will not be entertained for actions occurring on or after the date of publication of this notice.

Dated: February 26, 1998.

JOHN T. ROTH,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY.
U.S. CUSTOMS SERVICE,
New York, NY, September 17, 1993.

CLA–2–29:S:N:N7:235 889812
Category: Classification
Tariff No. 2916.39.4000, 2916.39.7000,
2917.39.3000, 2917.39.5000 and 2918.90.4000

MR. JOHN CASANAS
AJ INTERNATIONAL INC.
181 South Franklin Avenue, Room 308
Valley Stream, NY 11581

Re: The tariff classification of various chemicals from Israel, France, Germany or Great Britain.

DEAR MR. CASANAS:

In your letter dated August 26, 1993, you requested a tariff classification ruling on behalf of your client, Morre-Tec Industries Inc.

The applicable subheading and duty under The Harmonized Tariff Schedule of the United States (HTS), for the listed products are as follows:

Chemical	*HTS no*	*Duty*
dimethyl-5-nitroisophthalate CAS # 13290–96–5)	2917.39.5000	20 percent *ad valorem*
3-methyl-2-nitrobenzoic acid (CAS # 5437–38–7)	2916.39.4000	13.5 percent *ad valorem*
4-methyl-nitrobenzoic acid (CAS # 96–98–0)	2916.39.7000	3.7 cents per kilogram plus 17.9 percent *ad valorem*
monomethyl-5-nitroisophthalate (CAS # 1955–46–0)	2917.39.3000	13.5 percent *ad valorem*
4-methoxy-3-nitrobenzoic acid	2918.90.4000	13.5 percent *ad valorem*

Under the United States-Israel Free Trade Agreement, merchandise classifiable in HTS 2916.39.4000, 2917.39.5000, 2917.39.3000, 2916.39.7000 and 2918.90.4000, which has been produced in Israel, is duty free provided all appropriate requirements have been met.

This ruling is being issued under the provisions of Section 177 of the Customs Regulations (19 C.F.R. 177).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

JEAN F. MAGUIRE,
Area Director,
New York Seaport.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA–2 RR:CR:GC 960537 RC
Category: Classification
Tariff No. 2916.39.0300

MR. JOHN CASANAS
AJ INTERNATIONAL INC.
181 South Franklin Avenue, Room 308
Valley Stream, NY 11581

Re: Modification of NY 889814; 3-methyl-2-nitrobenzoic acid.

DEAR MR. CASANAS:

We have been asked to reconsider NY 889814, dated September 17, 1993. This ruling, issued to you on behalf of your company concerns classification of various chemicals, including, 3-methyl-2-nitrobenzoic acid, under the Harmonized Tariff Schedule of the United States (HTSUS). This letter is to inform you that, with respect to the classification of 3-methyl-2-nitrobenzoic acid, NY 889814 no longer reflects the views of the U.S. Customs Service.

Facts:

In NY 889814, Customs classified 3-methyl-2-nitrobenzoic acid (CAS # 5437–38–7) in subheading 2916.39.4000, HTSUS, the provision for other aromatic monocarboxylic acids, their anhydrides, halides, peroxides, peroxyacids and their derivatives, products described in additional U.S. note 3 to section VI, dutiable at the rate of 13.5 percent *ad valorem* (1993). At that time, Customs was unaware that 3-methyl-2-nitrobenzoic acid is also known as 2-Nitro-m-toulic acid.

Issue:

What is the proper tariff classification of the 3-methyl-2-nitrobenzoic acid under the HTSUS?

Law And Analysis:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRIs). The systematic detail of the HTSUS is such that virtually all goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied. GRI 6 provides that the GRIs apply in the same fashion to subheadings within the same heading. The products at issue are classifiable by applying GRI 1, that is, according to the terms of the applicable heading and subheading.

Subheading 2916.39.0300, HTSUS, is an *eo nomine* provision that specifically provides for 2-Nitro-m-toluic acid. Given that 3-methyl-2-nitrobenzoic acid is also known as 2-Nitro-m-toluic acid, we find that 3-methyl-2-nitrobenzoic acid is properly classified in subheading 2916.39.0300, HTSUS.

Holding:

The 3-methyl-2-nitrobenzoic acid is properly classifiable in subheading 2916.39.0300, HTSUS, as "[u]nsaturated acyclic monocarboxylic acids, cyclic monocarboxylic acids, their anhydrides, halides, peroxides and peroxyacids; their halogenated, sulfonated, nitrated or nitrosated derivatives: Aromatic monocarboxylic acids, their anhydrides, halides, peroxides, peroxyacids and their derivatives: Other: 2-Nitro-m-toluic acid." The applicable rate of duty in 1998 is 6.6 percent *ad valorem*.

NY 889814, dated September 17, 1993, is modified.

JOHN DURANT,
Director,
Commercial Rulings Division.

WITHDRAWAL OF PROPOSED REVOCATION OF CUSTOMS RULING LETTERS RELATING TO TARIFF CLASSIFICATION OF ORTHOPEDIC FOOTWEAR

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of withdrawal of proposed revocation of tariff classification ruling letters.

SUMMARY: This notice advises interested parties that Customs is withdrawing its proposal to revoke five ruling letters pertaining to the tariff classification of orthopedic footwear. Notice of the proposed revocation was published on January 7, 1998, in the CUSTOMS BULLETIN, pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057 (1993)).

EFFECTIVE DATE: March 18, 1998.

FOR FURTHER INFORMATION CONTACT: Greg Deutsch, Office of Regulations and Rulings, Textile Branch, U.S. Customs Service, 1300 Pennsylvania Ave. NW, Washington, DC 20229 (202) 927–2302.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Moderniza-

tion), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057 (1993)), on January 7, 1998, Customs published a notice in the CUSTOMS BULLETIN, Volume 32, Number 1, proposing to revoke Headquarters Ruling Letters (HQ) 086084, dated February 28, 1990, HQ 085930, dated February 9, 1990, HQ 083784, dated May 1, 1989, HQ 083716, dated May 1, 1989, and HQ 083593, dated April 17, 1989, each of which classified post-operative shoes and/or cast shoes in subheading 9021.90.80, Harmonized Tariff Schedule of the United States (HTSUS). Three comments were received in response to the notice. At this time, Customs has determined that classification in subheading 9021.90.80, HTSUS, of the merchandise at issue, constitutes "an established and uniform practice." In pertinent part, 19 U.S.C. 1315(d), states:

> No administrative ruling resulting in the imposition of a higher rate of duty or charge than the Secretary of the Treasury shall find to have been applicable to imported merchandise under **an established and uniform practice** shall be effective with respect to articles entered for consumption or withdrawn from warehouse for consumption prior to the expiration of thirty days after the date of publication in the Federal Register of notice of such ruling * * *. (Emphasis added.)

Therefore, this notice advises interested parties that Customs is withdrawing its proposal to revoke the five rulings set forth above. Pursuant to section 177.10(c)(1), Customs Regulations (19 CFR Part 177.10(c)(1), before the established and uniform practice may be changed,

> * * * notice that the practice (or prior ruling on which the practice is based) is under review will be published in the Federal Register and interested parties given an opportunity to make written submissions with respect to the correctness of the contemplated change * * *.

The merchandise subject to the five rulings will thus continue to be classified in subheading 9021.90.80, HTSUS, until such time as Customs completes the procedures above, to change the established and uniform practice.

Dated: February 27, 1998.

JOHN E. ELKINS,
(for John Durant, Director,
Commercial Rulings Division.)

U.S. Customs Service

Proposed Rulemaking

19 CFR Part 122

WITHDRAWAL OF INTERNATIONAL AIRPORT DESIGNATION—AKRON FULTON AIRPORT

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend the Customs Regulations pertaining to the field organization of the Customs Service by withdrawing the international airport designation of Akron Municipal Airport (now functioning as Akron Fulton Airport) and by designating Akron Fulton Airport as a landing rights airport instead. The change is being proposed as part of Customs continuing program to obtain more efficient use of its personnel, facilities, and resources, and to provide better service to carriers, importers and the general public.

DATE: Comments must be received on or before May 8, 1998.

ADDRESSES: Written comments (preferably in triplicate) may be submitted to and inspected at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue NW., Third Floor, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Harry Denning, Office of Field Operations, 202–927–0196.

SUPPLEMENTARY INFORMATION:

BACKGROUND

As part of a continuing program to obtain more efficient use of its personnel, facilities, and resources, and to provide better service to carriers, importers, and the general public, Customs is proposing to amend §§ 122.13 and 122.24, Customs Regulations (19 CFR 122.13 and 122.24), by withdrawing the international airport designation of Akron Fulton Airport (formerly known as Akron Municipal Airport) and by designating the airport as a landing rights airport instead. Akron Municipal Airport (currently known as Akron Fulton Airport) is presently listed as an international airport of entry under § 122.13, Customs Regulations (19 CFR 122.13).

An international airport, as defined by the Customs Regulations, is an airport designated officially as a port of entry for international flights, for entry of alien citizens, and as a place for quarantine inspection.

A landing rights airport is any airport, other than an international airport or a user fee airport, at which flights from a foreign country are given permission by Customs to land.

According to the Customs Regulations, designation as an international airport may be withdrawn for various reasons. One reason is lack of sufficient international travel through the airport. Another reason is failure of the airport operator to maintain an adequate facility. Both of these factors apply to Akron Fulton Airport. The City of Akron sold the building containing Customs office; Customs has no office space on site at the airport. Furthermore, only two aircraft were processed by Customs in 1996 and 1997 (none in 1996 and two in 1997). Under these circumstances, the Customs Service Port Director of Middleburg Heights, Ohio, has requested that Akron Fulton Airport's designation as an international airport for Customs purposes be withdrawn.

Customs will continue to provide service at Akron Fulton Airport on a landing rights basis, but there is no need to maintain two separate operations in Akron. The Customs inspectors stationed adjacent to the Akron-Canton Regional Airport (where they process the vast majority of private aircraft arrivals) will be able to provide Customs services to international aircraft at the Akron Fulton Airport on an as-needed basis.

PROPOSAL

The Customs designation of the Akron Fulton Airport as an international airport is proposed to be withdrawn; the list of international airports in § 122.13, Customs Regulations (19 CFR 122.13), is proposed to be amended by deleting the entry "Akron, Ohio-Akron Municipal Airport" from the Location and Name column. In addition, the list of landing rights airports in § 122.24(b), Customs Regulations (19 CFR 122.24(b)), is proposed to be amended by adding, in proper alphabetical order, the words "Akron, Ohio" in the Location column and the words "Akron Fulton Airport" opposite them in the Name column.

COMMENTS

Before adopting this proposal, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations Branch, U.S. Customs Service, 1300 Pennsylvania Avenue NW., Third Floor, Washington, D.C., 20229.

AUTHORITY

This change is proposed under the authority of 5 U.S.C. 301 and 19 U.S.C. 2, 66 and 1624.

THE REGULATORY FLEXIBILITY ACT AND EXECUTIVE ORDER 12866

Customs establishes, expands, consolidates, and makes other changes to Customs ports of entry throughout the United States to accommodate the volume of Customs-related activity in various parts of the country. Although this document is being issued for public comment, it is not subject to the notice and public procedure requirements of 5 U.S.C. 553 because it relates to agency management and organization. Accordingly, this document is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.)*. Agency organization matters such as this are exempt from consideration under Executive Order 12866.

DRAFTING INFORMATION

The principal author of this document was Janet L. Johnson, Regulations Branch. However, personnel from other offices participated in its development.

SAMUEL H. BANKS,
Acting Commissioner of Customs.

Approved: February 23, 1998.
DENNIS M. O'CONNELL,
Acting Deputy Assistant Secretary of the Treasury.

[Published in the Federal Register, March 9, 1998 (63 FR 11382)]

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